

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Charles Michael Stokes, # 324518,	)	C/A NO. 9:10-1711-CMC-BM
	)	
Plaintiff,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Andrew Moorman, sued in his individual	)	
and official capacities,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On August 17, 2010, the Magistrate Judge issued a Report recommending that this matter be dismissed without prejudice and without service of process. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on September 3, 2010.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff contends that his complaint should escape dismissal as it is not duplicative of an earlier-filed case; that the Magistrate Judge errs in his discussion of the case as being an assertion of malicious prosecution; and that Defendant is not entitled to the various immunities outlined by the Magistrate Judge in his Report.

Plaintiff's objections are without merit. To the extent the Report contains a discussion of malicious prosecution which (Plaintiff contends) is not the state law cause of action asserted by Plaintiff, the court notes that even if Plaintiff had stated a "viable" § 1983 claim for "malicious abuse of the legal process," Obj. at 17 (Dkt. # 11, filed Sept. 3, 2010), Plaintiff's complaint is still subject to dismissal for the reasons stated by the Magistrate Judge.

This matter is dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
September 27, 2010

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